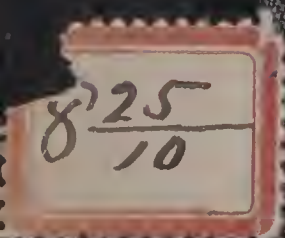
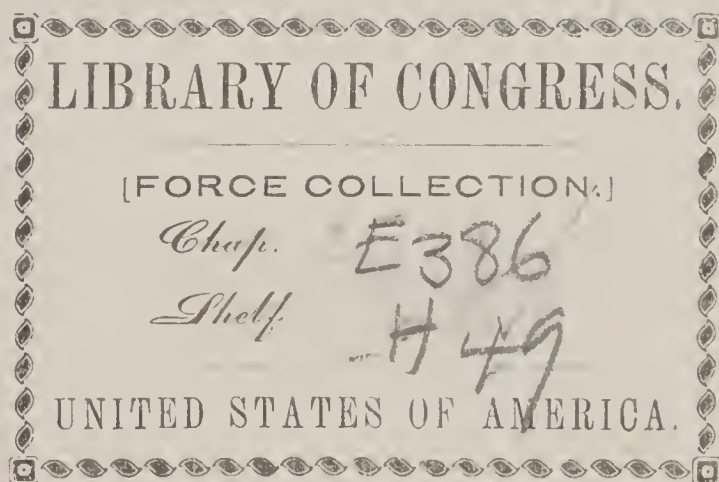


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LETTER

OF

JOHN HENDERSON,

II

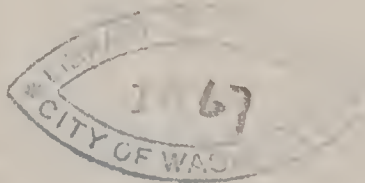
TO

THE LEGISLATURE OF THE STATE OF MISSISSIPPI.

DECEMBER 28, 1840.

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*To the Honorable the Legislature of the State of Mississippi:*

GENTLEMEN: On the 5th day of March last I received from our State Executive, and presented to the Senate of the United States, the following resolutions, viz:

Whereas the pecuniary condition of our country is a subject of the most imposing magnitude, and of the deepest interest to the people of this State, demanding the exercise of wisdom, firmness, honesty, and patriotism, in those public functionaries upon whom devolves the duty of legislation, to the end that the evils under which we labor may be corrected: and whereas an expression of opinion on the part of the Legislature of this State, with regard to the causes of the present evils, and the remedies best calculated to correct them, seems to be called for by every consideration of public duty:

1st. *Wherefore be it resolved by the Legislature of the State of Mississippi, That, in the opinion of this Legislature, the great and primary cause of the prevailing embarrassments and pecuniary difficulties of the country is to be found in excessive banking, under the authority of the General and State Governments; that paper issues, by bank corporations, purporting to be the representatives of money, in their very nature tend to the seduction of individual and national industry from its natural and legitimate pursuits; convert honest enterprise into a spirit of wild speculation; engender public and individual extravagance, and looseness of morals; lead to every species of gambling, and beget overaction in every branch of business: that these are melancholy signs of the present times, and that they have kept pace with the increasing redundancy of paper issues for several years past.*

2d. *Resolved, That it is the duty of the State and General Governments, so far as they possess the constitutional power, to provide a remedy for those evils which have been fastened upon the country by unwise and reckless legislation.*

3d. *Resolved, That the power of Government over currency is one of the high attributes of sovereignty; that the only currency known to the constitution of the United States is coin or metallic currency; that the States have not only parted with, and granted to the Government of the United States, so much of their sovereignty as relates to coin or metallic currency, but the States have also prohibited themselves from the exercise of such attribute of sovereignty as relates to coin or metallic currency; and also such attribute of sovereignty as relates to emitting bills of credit.*

4th. *Resolved, That the Independent Treasury system, recommended by the President of the United States to Congress, by which the moneyed operations of the Federal Government are proposed to be entirely separated from the banks, and the revenues collected in coin, is the only measure within the competency of Congress to impose an effectual restraint upon inordinate issues of bank paper; that it is contrary to the genius and policy of the Government that its revenue should be used in aid of commercial, manufacturing, or any other privileged interest, through the instrumentality of banks, to the prejudice of the agricultural and productive interests: therefore,*

5th. *Resolved, That, believing that the connexion of the Government with the banks exerts a deleterious influence upon the industry of the State of Mississippi, this Legislature is of opinion that the Independent Treasury system, with the specie clause, should be adopted at the present session of Congress; and that our Senators be instructed, and our Representatives requested, to vote for the same.*

6th. *Resolved, That the bill introduced in the Senate of the United States, by the Committee on the Public Lands, to graduate the price of said lands to actual settlers, is a measure that is called for by the best interests of the State.*

7th. *Resolved, That this Legislature heartily approve the leading measures of the late and present administrations of the Federal Government; that they have full and entire confidence in the talents, integrity, and patriotism of Martin Van Buren, the Chief Executive Magistrate; and that they regard his administration as giving promise of the same success which marked that of his illustrious predecessor.*

8th. *Resolved, That our Senators in Congress are hereby instructed, and our Representatives requested, to support, in good faith, the leading measures and policy as heretofore brought forward and advocated by the PRESIDENT OF THE UNITED STATES, and to use all fair and proper exertions to carry out and sustain and accomplish the same.*



9th. *Resolved*, That the Governor be requested to transmit a copy of the foregoing preamble and resolutions to our Senators and Representatives in the Congress of the United States.

J. SPEIGHT,

*Speaker of the House of Representatives.*

GEO. B. AUGUSTUS,

*President of the Senate.*

A. G. McNUTT.

Approved, February 13, 1840:

In submitting them to the consideration of the Senate, I accompanied their presentment with these remarks:

“Mr. PRESIDENT: I rise to present a series of resolutions, nine in number, passed by the Legislature of the State of Mississippi. These resolutions recognise the existing embarrassments of the country, and express the sense of that honorable body that they are mainly attributable to excessive banking.

“As a measure of curing the evil, they commend the sub-Treasury bill, with the specie clause, and instruct the Senators here from that State to vote for this bill. As that bill has passed this body, and against my vote, I will only observe that, apprehending the introduction of some resolution upon this subject in the Legislature of Mississippi, (and before the bill passed here, I was advised such a resolution had been introduced,) I voted to delay the passage of the bill on every occasion presented, that I might hear the result of the deliberations of the Legislature of Mississippi on the subject, intending to conform my vote with such result; being fully decided, however, that unless that honorable body would assume the responsibility of an affirmative vote on that bill, my own deliberate judgment being against it, I should vote accordingly, and as I did vote.

“In these resolutions the Legislature also express an opinion in favor of a graduation of the price of public lands to actual settlers; and, though no formal instruction accompanies this opinion, I am happy to say here that I concur in this proposition, and would cheerfully go much further in the principle it indicates, and would secure the home of the actual settler on public lands before survey, not merely by pre-emption, but by actual donation.

“These resolutions also approve the leading measures of the late and present Administrations of the General Government, and express the confidence of the Legislature in the present Chief Magistrate of the United States; on which expressions of opinion and confidence I do not feel called upon to make any comments at this time.

“The last of these resolutions, purporting also to be a legislative instruction, if I did not know my silence might be misconstrued, I should forbear any particular notice of here, intending as I do to respond more fully to its character and pretensions elsewhere.

“I have ever, Mr. President, avowed and practised the republican principles of Jefferson and Madison as my political creed, including in these principles the doctrine of instructions as I understand them, and as the old Republican Party have heretofore regarded them. But a modern mis-called democracy, practising a Federal faith of implicit homage, if not servility to Executive dominion, and to accomplish party ends, and not the legitimate attainment of a measure discussed and deliberated on by the People in the place of their Representatives, claims an unwarrantable application of the doctrine of instructions, of which the resolution before me is an illustration.

“This resolution assumes to instruct the Senators from Mississippi to support, in *good faith*, the leading *measures and policy* of this Administration, as heretofore put forth by the *President, &c. &c.*

“A manifest objection to this resolution is, that it is vague and indefinite in the objects of its requisition, and obviously dangerous in the same degree in which it is indefinite. It is also unauthorized by any power known to our forms of government, and without example in the practice and precedents of the old Republican party. It is anti-democratic, as yielding a blind and slavish deference to Federal Executive opinion. It is subversive of political morality, of personal integrity, of necessary freedom of debate, and of representative responsibility. It is, in short, destructive of the constitutional apportionment of rights, powers, and duties, as distributed and restricted, and hence essentially revolutionary in its tendency, as changing both the theory and practice of our Government.

“The Legislature of Mississippi and myself have a common constituency—the People of our State. There is no principle of our Government that contemplates a transfer by the State Legislature of the will and wishes of the people to the care and keeping of the Federal Executive, with a mandatory order to the Representative to consult the Executive for his opinions and policy, as a means of correctly ascertaining the people’s will, so there deposited. All will perceive I could not discharge the duty *thus assigned me, in good*



*faith*, without such consultation. The proposition is so opposed to the principles of State rights, and the republican faith as heretofore taught, and so wholly in conflict with the structure and theory of our Government, that I can scarcely imagine it to be the result of dispassionate reflection. Be this, however, as it may, with my own undoubted convictions on the subject, I cannot consent to become the instrument of thus prostrating those sacred barriers in our constitutions of government which the fathers of our country have interposed with so much policy, wisdom, and circumspection, for the limitation and security of the rights of each department, and the healthful preservation of our common liberties."

Shortly afterward, your vote of censure, &c., approved by the Governor on the 22d of February, 1840, came to hand, in form of the following resolutions, viz :

Whereas, information has just been received in this city, that the Independent Treasury bill had passed the Senate of the United States, and that the Hon. John Henderson, one of the Senators from Mississippi, voted in opposition to the same :

Therefore, by the Legislature of the State of Mississippi, be it resolved, that John Henderson, Esq., a Senator in the Congress of the United States, in casting his vote in opposition to the Independent Treasury bill, grossly violated the known will of a large majority of the people of Mississippi.

*Resolved*, That John Henderson, Esq. by casting his vote in the Senate of the United States, in opposition to the will of the people of Mississippi, so lately expressed, has acted in derogation of the rights of the freemen of this State, and deserves at the hands of their representatives their sternest rebuke.

*Resolved*, That when a representative violates the will of his constituents, knowingly by his conduct, he is as deserving of reprobation, as though written instructions had been delivered to him and disregarded.

*Resolved*, That the Hon. John Henderson be, and he is hereby, invited, and respectfully requested, forthwith to resign his office as Senator ; to the end that the will of the people of Mississippi may be fairly expressed.

You will perceive my remarks in the Senate indicated my purpose to reply to your resolutions of 13th February, when your adjourned session should afford me the opportunity. Your further resolutions of 22d February have imposed a second obligation of like character, and I shall now endeavor to discharge both.

In the outset of this reply, I reiterate what I have repeatedly avowed, my firm belief in the doctrines and principles of instruction as obligatory upon the representatives, equally in both branches of both our national and State Legislatures. But on what foundation does this political doctrine rest ? What its rules, bounds, and limitations ? Has it none ? If none, then it puts aside all constitutions and forms of government, and substitutes in their stead the unstable and capricious will for the time being of a dominant party. Those who push it to this extent, and claim for it such absolute consideration, act with an inconsiderate violence that multiplies arguments and enemies against it, and incurs upon its just pretensions obloquy and contempt.

If, in tracing the foundation and bearings of this doctrine, I should convict your honorable body of such like perversion, I beg you will consider it is with no design of repelling your censure and personal aggression in a spirit of resentment, but only to vindicate my own integrity, together with the doctrine which you profess, and which it is my purpose in good faith to practise.

It is to be deplored that, in the numerous resolutions of legislative instruction to Senators in Congress which have gone forth from time to time, there is found so little of the virtue of consistency and the accumulated strength of precedent to advise and establish the public intelligence on this subject. (*See note at the end.*) Most of those which have emanated in good faith and without party bias have avowed no rules for their authority, whilst those originating



in party asperity, have often defied alike all rule and all reason. It is nevertheless believed that the principal rules which govern this doctrine are so obviously prescribed, that reasonable men will not differ essentially in understanding them. And I feel particularly gratified that your honorable body has furnished me the evidence, in the resolutions before me, that you at least concur in the same *principles* I have ever professed, and shall continue to maintain on this subject, however much we may differ in the application of them.

In deducing the *principles* and ground-work of this right, it is unnecessary to prove that which none deny, that all our governments are founded in the *will* of the people. Every form, power, and proportion they possess;—all their obligations, limitations, and restrictions, but exhibit the embodied will of the people—the pledged, permanent, and abiding expression of that will, and so to remain unchanged, except in the manner prescribed in the compact. Now, the agents appointed by such organic expression of popular will, to *administer* their powers and trusts, to shape and fashion their measures and policy, would be in strange dissonance with the theory of such forms of government, if not likewise bound to reflect the popular will in their administration. Hence, I conclude, results the essential theory of our representative principle—the agent representing the will and wishes of his constituents in the measures and policy of government, who, by reason of the mere *form* of government only, are not present to urge them in person.

I can but anticipate the ready acquiescence of your honorable body in these premises, as expressive of a sound orthodox democratic faith. And from these premises I proceed to inquire into the several powers and duties of your honorable body and myself in relation to the people of Mississippi and *to each other*, so far as the doctrine of instructions is involved, and the extent to which you claim its exercise.

Your powers, then, are prescribed by the constitution of the United States and of the State of Mississippi, both of which you take an oath to support, and both of which, it is assumed, are the *permanent* expression of the people's will, *which they have willed and contracted not to change in any other manner than therein prescribed*. Faithfully conforming to these *paramount* expressions of popular will, our democratic theory indicates, as your further duty, that, in all measures of administration, *keeping within the above specified land-marks*, you should truly reflect that will of the people, which, in matters of expediency, they have the unquestionable right from time to time to prescribe and change, as policy may dictate.

Now, as you are representatives and legislators for the people of Mississippi, so I acknowledge myself to be. As they all make up your constituency, so are they mine. And, though my powers of official action are prescribed only by the constitution of the United States, and while more limited in their general variety are more extended in their operation, yet, for all the purposes of this parallel, I regard my relations to the people of Mississippi as *substantively* the same with yours, and in all measures of mere discretion, equally bound to defer to their current and ascertained will.

Now, if right in the preceding postulates, whence arises your authority to instruct me on any subject? and what is the extent of that authority? Does it not begin and end with the will of the people? Do you claim any inherent power over and above that will? Has the constitution of the United States, or of the State of Mississippi, made me your agent, and amenable to your will, whether or not in conformity to the will of our common constitu-



ents? Do you claim that the right of instruction in the Legislature is equivalent to a *power*, and that it imposes a positive *obligation* of obedience, even though the matter of instruction be in opposition to the constitution of the United States, or of the State of Mississippi, or to the *will* of the people of Mississippi? I shall not do you the injustice to suppose you claim any such *powers* as these questions imply. And yet there are those who contend that because the State Legislatures are the electors of the United States Senators, that hence arises a power in the Legislature which may rightfully command a Senator's obedience to their instruction, or require his resignation. But if this relation alone originated these rights and obligations respectively, then the same powers and duties should result from the same relation between the college of electors of President and Vice President, and those whom their votes invest with these high offices. But such an application of the principle becomes too manifestly absurd to require any refutation; and it is believed sufficiently exposes the fallacy of the whole proposition.

Desirous to impute to you only such opinions on this subject as I suppose you have purposed to declare, I conclude you have assumed to ask my obedience to your instructions, simply on the ground that you were expressing the will of the people of Mississippi in doing so. That, coming recently from among them, you considered yourselves charged with an expression of their will, which you have sent me in form of monition or instruction that I should govern myself accordingly. If this be your theory, I accord you my acquiescence.

But your honorable body do not seem to note the fact with much consideration, that every aspect of this question exhibits us equally as representatives (in different Legislatures) of the people of Mississippi. And as no diffidence or distrust has qualified your confident assertion, that, as a representative, I have "grossly violated the known will of a large majority of the people of Mississippi," may I not be permitted to entertain the question as *possible*, that you are not necessarily *infallible* in this respect? For if I am not bound to close my eyes to the reading of the constitution, the bestowments and distribution of power, and to other external evidence of the people's will, and take your declaration of it as *conclusive*; if I am not foreclosed by a plea of estoppel from showing the truth in the case, I have no apprehensions of effecting my acquittal, and should be well content to do so without implicating my accusers.

With this latitude of defence, the question of fact on which your accusation against me is predicated, will be readily disposed of. I assert, then, what is known to many of you, that I was elected to the office I now hold with my opinion on the sub-Treasury project openly avowed in public addresses to the people, and in a circular setting forth my political creed. It is admitted that, by the election in November, 1839, a majority of those differing from me in their political opinions were returned to the Legislature. This result is assumed (as I suppose) by your honorable body as having furnished me evidence equivalent to express instructions on the subject, that a majority of the people of Mississippi were in favor of this long-contested measure. To this I answer, it was known to me and to you all, that the local bank question was the great and highly-exciting question in issue in that election; and which did not necessarily involve an expression of the popular will, either upon the sub-Treasury scheme or upon any other of national policy. But will not disguise the fact, that the result of that election induced doubts in my

mind as to the will of our people in respect to that measure, and of my duty in voting upon it. But, in balancing all the circumstances, my best convictions were, that the opinion of the people of our State in favor of the measure, as implied in this election, required further confirmation; and I determined, if their Representatives fresh from among them should advise me of their wishes in its behalf, that I would vote for it, though opposed to my own judgment. The unyielding promptitude (to say no more of it) with which the measure was hurried to a vote in the Senate, deprived me of your advice, and hence I voted against it.

But how now stands the question of fact? Is your honorable body still assured a large majority of the people of Mississippi are in favor of the sub-Treasury law? If the election of 1839 was proof positive on this subject, how shall we regard the evidence of 1840? I will not offend against the proprieties of this occasion, by declaring in a tone of over-wrought confidence, that the people of our State, at the late election, have sanctioned the same vote you have so unsparingly censured; but I appeal to your magnanimity if I may not indulge the consolation of believing they have fairly cancelled your "*sternest rebuke?*"

But, passing this point for the present, I come to the matter of your 8th resolution of 13th February last, which I formerly declared, and now most respectfully repeat, was an unauthorized assertion of power on your part; obedience to which, a sense of duty compelled me to disclaim. This resolution directs and instructs me "to support, in good faith, the leading measures and policy as heretofore brought forward and advocated by the President of the United States, and to use all fair and proper exertions to carry out and sustain and accomplish the same."

I have before said—and the position is incontrovertible—that our constitutions are deliberate and permanent expressions of the people's will, and no rights have been reserved to any *fraction* of the people to dispense with, or change, the specific and practical requisitions of these instruments, either by legislative instructions, or any other means than by those stipulated. And it would seem to me an hypothesis not to be entertained, that they ever wished to do so. That, therefore, can never become a legitimate precept of instruction which commands an agent to violate both his oath and the constitution of his country at the same time.

The constitution of Mississippi has divided its civil magistracy into three departments, and forbidden their interference with the jurisdiction of each other. Should the particular constituents of any one of your honorable body instruct you, by petition or otherwise, to hear and determine suits at law before either House of your Legislature, which of you would consider yourselves bound to obey such instructions? Nor is *resignation* an *alternative*, in such a case, to be exacted; because, by the same constitution in which the people have willed this division of their civil magistracy, they have *willed and decreed* their Representatives shall (may) hold their office for two years; and have also *willed and decreed* they shall take an oath to sustain this constitution and these distributions of power inviolate. Now, when the Representative so performs his precise duty as enjoined upon him in the constitution by the people, is it any thing less than arrant demagoguism to charge him in such or like case with a disregard of the popular will? To estimate this principle with such exaggerated pretensions, is to endow it with the qualities of a fickle tyranny, inconsistent with itself, and alike subversive of its own ends and objects, and all established forms of government.



This illustration is sufficient for all imaginable cases where instructions are unauthorized with reference either to the source from which they come, or the subject to which they are directed. Take an instance of each description.

The constitution of the United States has invested Congress with full legislative powers over the District of Columbia. In reference to my legislative functions here, my understanding is, that the people of the District are my constituents, and, for their legislation, I am fairly bound to consult their will and interests. If this be not so, they are equally the victims of the local caprices of each separate people of the several States of the Union. And the people of Mississippi have no right to complain that the people of other States are continually thrusting forward their impertinent petitions and instructions, to direct the legislation for *this District* according to *their* will. But must not every American citizen, whose heart is in its right place, and who values and comprehends the institutions of his country, perceive the insulting injustice that the laws of this District should be prescribed by the people of Maine or Louisiana? Now, for myself, I regard such officious intermeddling with the rights of the people here, as utterly unauthorized, and in positive conflict with the theory and spirit of our Government.

The duty of a Senator in Congress is *judicial*, in all cases of impeachment. If on a trial of this kind a State Legislature were to instruct their Senators to vote for the conviction or acquittal of the accused, does any one believe such instruction fairly imposes a constitutional or reasonable duty to obey or resign?

Regarding the will of the people embodied in the stable form of constitutional law as paramount, these instances exemplify, to a great extent, the reasons and rules within which I conceive the true theory of popular instructions is founded. And I can neither appreciate the patriotism, policy, nor logic, by which it is claimed materially to extend the doctrine beyond these limits.

Within these rules and principles I shall test the integrity of your 8th resolution. And if it be found to emanate from the people of Mississippi, and conform to those constitutional rules which they in good faith and I by an oath am bound to preserve and maintain, till they shall change them in a manner prescribed by themselves, I will not gainsay its obligation nor my duty, so far as obedience is possible. But if, on the other hand, it directs what the people *never commanded*, and conflicts with their standing orders which they have deliberately commanded, and it should prove only the ignoble exactions of party zeal, and subversive of the strongest barriers established to defend and protect our constitutional liberties, what then is my duty?

I assert but a freeman's privilege in propounding the inquiry to your honorable body when it was that the people of Mississippi communicated to you *their will*, as this resolution imports? Do you intend the inference, that the people, by their election of November, 1839, endorsed *all the leading* "measures and policy of the President, as brought forward and advocated by him" up to the period of February 1840? And what measures did they so design to distinguish? I intend no disrespect to your honorable body, nor any reproach upon its intelligence, when I assert, with much assurance, that no two committees from your honorable body, or from among your political friends in Congress, could be raised, which, acting separately and without conference with each other, would agree in detailing a catalogue of the "*leading measures and policy brought forward and advocated*" by the present President of these United States, and which you instruct me the people of Mississippi have

specially admonished me to support in good faith. It is therefore no affected ignorance on my part, when I assure you that I could not designate the measures you may refer to under this equivocal and compendious description. I propose, as an experiment, that we compare notes a little, and see how we should be likely to concur.

The independent Treasury bill does not appear to have been included by you in this 8th resolution, because you specially instruct me on that subject in a *separate resolution at the same time*. Two other measures, however, which, in my judgment, would seem entitled to the distinction of "*leading measures*," prominently present themselves, viz: the President's proposition to invest Congress with a new and untried power over State corporations, by process of a bankrupt law; and, secondly, the standing army "*plan*," so strongly recommended by the President. Do your honorable body recognise these as two of the "*leading measures*" which the *people* of Mississippi have commanded their Senators to "use all *fair* and proper exertions to carry out, sustain, and accomplish?" Now my opinion is, and I am by no means singular in it, that to accomplish these measures "*fairly*," an amendment of the constitution is indispensable; and if their "*policy*" be so ardently approved by our constituents, it is unfortunate, perhaps, that so formidable an obstacle is interposed to the achievement of their wishes.

Passing from these specimens of "*leading measures*," let us note a few samples of the President's "*policy*;" for this, too, you advise me, the people expressly require I should support. Here, also, I am left by your honorable body without that degree of light which, if the people have spoken explicitly, should have been imparted to me. And with every disposition to be candid, it is obvious I might often mistake the purpose or "*policy*" of the President under instructions so vague.

It is a vexed question whether or not it has been the President's "*policy*" to destroy State banks; equally doubtful whether or not it has been his "*policy*" to introduce an exclusive metallic currency, and break up, so far as possible, the credit system. His friends quote him on both sides of all these questions. Is it not reasonable, if our constituents intended I should support the President's "*policy*" on these important subjects, that I should have been better advised than your honorable body have seen fit to advise me?

There have been some revelations of the President's "*policy*" which are probably less concealed or equivocal. One, at least, I have believed, conspicuously prominent, viz: a *policy* of strengthening the federal Executive power. Hence all who have dared to oppose Executive dominion have been hunted down by the President's pensioners as traitors to their country; and all liege subjects, who obeyed orders with due servility, and thereby fell into disfavor with the people, regularly became the favored candidates of the President's patronage. A long list could readily be presented, verifying this "*policy*" and these truths.

Washington, Jefferson, and Jackson avowed the doctrine that the patronage of office should not be brought in conflict with the freedom of elections. But in this enlarging "*policy*" of executive power, the right and tenure of office has been boldly staked upon the officious, efficient, and boisterous zeal of the partisan.

The constitution of the United States prescribes that "*All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*" The Presi-



dent has proclaimed that he constitutes a "*component part of the legislative power.*" These instances I deem sufficient to establish one distinguished feature in the President's "*policy.*" And have the democratic citizens of Mississippi instructed me to cherish and sustain this "*policy?*" May I not rather hope there is some mistake or misunderstanding in this matter? And yet I confess this 8th resolution of your honorable body points alarmingly to the promotion of this precise *policy* of augmenting Executive power.

In the difficulty of accomplishing your *general* directions, from the numerous cases of doubt that must arise, what more reasonable means of certifying myself in a correct discharge of the duty thus assigned me, than by personal consultations with the President? But in what democratic system of politics has it been taught, that the representative should confer with the Executive for the measures and policy of his legislative duties, rather than with his constituents? It is perhaps reserved to your honorable body, and to one other similarly distinguished for its unwonted zeal and enlightened perceptions in the cause of *modern* democracy, to answer. But though this suggestion of transferring Senators in Congress over to the President's use is not original with your honorable body, yet the time and circumstances of the discovery, the novelty of the assignment, and the doubtfulness of the title, concur to render the precedent questionable, and do not strongly commend it to further imitation.

But the most remarkable pretension of this resolution is, the spiritual right claimed by your honorable body to *instruct my "faith."* One wiser and better than we, has said of the sister virtues, "the greatest of these is charity." Not seemingly impressed with the truth of this sentiment, you give to *faith* the precedence; and hence a new reading to a text heretofore much respected, which I presume you would render—"works without *faith* are dead." To sustain and support the *leading measures and policy of the President*, would not insure my vindication against your censure, unless sanctified also by my "*faith.*" How long since this new power of directing my "*faith,*" religious or political, was committed to your charge? And what process does your modern democracy teach in plying its precepts? The victims of the Inquisition have often made oral confessions of a *faith* which the heart spurned. Would such suffice you? And if yea, "*is thy servant a dog that he should do this thing?*"

In review, then, of this 8th resolution, I have found nothing in it to command my respect, much less my obedience. It is quite impossible for me to conceive that the people of Mississippi have ever deliberately willed their Senators instructions, which propose to make them clerks and registers of the President's will. It would imply a disrespect I am incapable of entertaining toward them, to believe for a moment they have intentionally advised so much of political humiliation. And, tenacious as I hope ever to be of their honor and interests, and faithful to discharge the high trusts they have reposed in me, I shall forbear to surrender myself, and my constitutional duties, to the ends and objects indicated by this resolution.

Following you in that order in which your vigilance has accompanied my official career, to guard and guide my actions, and to bestow timely censure for supposed delinquencies, I come to note more particularly your resolutions of 22d February last.

Your first resolve declares, that in my vote on the independent Treasury bill, I "grossly violated the known will of a large majority of the people of Mississippi." Each of your honorable body, in voting for this resolution,



assumes it as of his personal knowledge, and together avouch your collective responsibility for the truth of its assertion. If I could recognise the integrity of this imputation, I have sufficient self-respect to believe, that I should feel my own conduct, rather than your disparaging reproaches, had dishonored me. I know there are those of both political parties who hold and act upon this subject differently; who believe, that, when in office, they are invested with *power* as of *personal right*, to be used and exercised as their *individual opinions* shall honestly dictate. However true this may be, as to those offices where the laws prescribe and define a precise course of duty, I hold the principle essentially different in respect to those official trusts, through which laws are derived, and popular policy prescribed. With reference to these, the wide field of discretion in which measures and policy have their origin, I cannot regard as the prerogative of *official discretion*; but as honorary agencies in which the will and interests of the constituency should be consulted with the most scrupulous fidelity. I consider that this principle pervades our entire system, and extends as well to executive as legislative offices. All their official *discretionary action*, should conform to the will and wishes of their constituents. Mine, in a particular sense, are the people of Mississippi. I can defer to no popular will superior to theirs, nor sustain any interest paramount to theirs. In legislating with other Senators for all the States, I consider it my duty to speak the voice of Mississippi. The *aggregate will* and interest of the *United States*, is more certainly and properly ascertained by a true representation of each several State. Not that each several State should achieve its *exclusive* interest in the result of such legislation; (this of course would be impossible;) *but the equal and just concessions which should follow, in producing a law for the government of all, should proceed from a faithful assertion by the representative of the separate will and wishes of each.*

Such is the light in which I apprehend my duty, and on these principles shall ever willingly abide the instruction of my constituents. I have never thought myself commissioned to legislate upon the simple responsibility of my own judgment, for the good of *all the people of the United States, as a collective mass*, pretermittting the particular interests of my constituents. Such a view of duty, to my perception, savors too strongly of consolidation, and palters to federal supremacy with a sacrifice of local interests, which over-taxes the selfish infirmities of our nature, and strains at a sort of transcendental patriotism but little in harmony with the States right theory of our system. What more prudish (if not culpable) affectation of official independence could be exhibited, than to see the representatives from Rhode Island urging a system of revenue by direct taxes, and those from Mississippi foremost in their zeal for a protective tariff, *each contending for the good of the nation at large*, yet directly adverse to the will and wishes of their respective States?

In these views I trust your honorable body will perceive but an amplification of the principles you profess, and which it has been my pleasure to avow in repelling your imputation against me. I have no necessity to elaborate an argument in elucidation of the particular question on which you have arraigned my official integrity. The circumstantial evidence furnished by the election of 1839, you construed as *proof positive* in one way; I believed and acted upon it in another way. Time has already fairly vindicated my construction of it, and repudiated yours. And the result, beside admonishing your honorable body, that the verity of a proposition is not always proportioned to the violence of its assertion, confirms me

also in the opinion, that the right of instructions has its abiding place with the people. And though the Legislature should be respectfully deferred to as *prima facie* exponents of the popular will, yet infallibility, actual or constructive, is not their prerogative.

In your third resolution of February last, you declare: "That when a Representative violates the will of his constituents knowingly by his conduct, he is as deserving of reprobation as though written instructions had been delivered to him and disregarded."

This expression of your opinion concedes fully what I maintain on the same subject; that instructions do not derive their obligation by reason of their emanating from the Legislature, but *because* they are charged with the people's will; and that their will is *equally obligatory* upon the representative when *known to him by any other means*, as if truly reported by instruction. In other words, legislative resolutions of instruction furnish *evidence* of what the people will; evidence, which is generally correct, and *therefore binding*; but, when manifestly not so, can impose no obligation.

Another idea here disclosed by your honorable body deserves notice. You charge that I well knew, without your advice, the people's will respecting the subject in question; and that I was equally bound by my knowledge of that will, as if instructed in writing. Whence, then, the necessity or propriety of your instructions? The distrust you have chosen thus to record against me, betrays an amiable conviction of your superior claims over mine to the confidence of our constituents; and the complacency of the conceit is only equalled by the unaffected grace with which you give it utterance.

Having timely suspected, and duly directed me in my duty with correspondent despatch, you easily convict me with acting "in derogation of the rights of the freemen of" Mississippi; and then how natural the conclusion that for this transgression I deserve "at the *hands of their representatives* their sternest rebuke." Is it ascertained, then, that you are the ministers of justice in such cases? I appeal to our masters.

In your resolution inviting and requesting me "forthwith to resign," I recognise an innocent pastime of your honorable body, and a politeness in the manner of expression well suited to the civility of the occasion. And as you have not given this in form of instruction, I am relieved from the necessity of combating any such erroneous assertion of right on your part. And yet a word on this subject may not be amiss.

Elected by the people's representatives, and in the form and manner by the people prescribed, I have been commissioned for the constitutional term of six years. I do not know that the people of Mississippi desire to change the provision of the constitution of the United States in which this tenure to the office is affixed; and I cannot certainly suspect them of wishing to change it in any other way than that appointed by themselves. But not doubting the individual sincerity of those of your honorable body who have so respectfully communicated your joint request for my resignation, I feel bound in equal candor to reply that I have not yet concluded to second your wishes in this behalf; but, at the same time, beg leave to assure you that I hope and expect so to deport myself "that the will of the people of Mississippi may be fairly expressed."

Distinguished by the preferences of the people of my State with the high office their representatives have bestowed upon me, I trust I shall not be pertinacious of the honor, when reasons which should influence an honorable man may render my retirement excusable and proper. I do not profess to be insensible to such assaults of party violence as illy harmonize with



the morality and intelligence of our people ; but I profess to be much more willing to encounter these than to permit the aggressors to achieve their highest aims by means so unwarranted. I believe there is neither right nor propriety in the Legislature to request my resignation ; and, if even desirous to surrender my office, I should reluctantly submit to be expelled by such a system of legislative usurpation.

But, so far as this request of your honorable body is intended as an exposition of public opinion or a party creed, it is not foreign to my defence to remind you that, as *far back* as 1834, there was a party in our State who called themselves *the democratic party*, in contradistinction to the *State rights nullifiers*, and others whom they called bank federalists. In November of that year, a convention was held at the city of Jackson by the said democratic party to "rebuke" Senators Poindexter and Black for the high crime, among others imputed, of uniting themselves with *nullifiers*, &c. "in violation of the public sentiment of the people of Mississippi." The names of those composing that convention are appended to this communication, with not the slightest intentional disrespect to any one of them, but for the purpose of showing that they were a fair representation of the democracy of that day, and what their opinion on this question of exacting resignations of office. I extract from page 6 of the published pamphlet containing the elaborate protest of that convention, the following declaration of party faith :

"In exercising the republican privilege of protesting against the proceedings of their public agents, the *democracy of Mississippi do not claim the power of displacing those agents from office, however delinquent, misguided, or weak-minded they may be, until their regular term of service for which they were elected expires* ; nor do they claim the right of annulling the acts of those agents duly commissioned by them, although those acts may be *against their will and interests*, until they can constitutionally and legally do so, by electing other agents more trustworthy. They claim the privilege of *protest* against the acts of public servants as a constitutional AND DEMOCRATIC measure, from which their public servants, if injustice be done them, can always appeal to the ballot-box," &c. &c.

If such was democracy in 1834, how changed if not improved in 1839. And a portion of the names affixed to the protest of 1834, considered of in conjunction with the ayes and noes recorded upon the resolutions of your honorable body, shows that there are patriot politicians who hold it yet a doubtful question, whether self-consistency or popular credulity may be best relied on for popular favor.

Having thus examined the accusations of your honorable body against me, I submit the questions in controversy to our common constituents, whose right alone I recognise to pass final judgment between us. The exposition of my opinion upon the doctrine of instructions has been designedly particular, and such as I have ever avowed and firmly believe. I have no motive for disguise or concealment ; and, desirous to avoid misrepresentation from any quarter, have endeavored to meet all your questions, and the entire subject, in full force. Whether these opinions will satisfy either your honorable body or "the high-thinking portion of the Whig party," I know not. I only know they are such as I have ever heretofore held and expressed, and am willing to abide by. And they are such, too, as I verily believe to be the true faith of republican democracy.

However humble my capacity to serve the State, I have felt in my position no cause for censure or self-reproach ; of course, therefore, have regarded yours, and that which I have seen from other sources, as undeserved. But of this, and all else submitted, those having less of personal interest will best determine.

JOHN HENDERSON.

WASHINGTON, December 28, 1840.



NOTE.—It is a remarkable fact, that a doctrine which is professed to be so generally acknowledged, particularly in the South and West, should be so vaguely or diversely understood. I am averse to believe the difficulty lies in the subject itself; for, to my apprehension, its rules and principles are the rational and necessary deductions from our theory of Government. And it is no less a folly than an error in the Representative to deny its claim; for the people can, and will, demand that the principle shall be respected. The recently defeated candidate for the Presidency may console himself in retirement, that he has fallen in a virtuous attempt to establish principles, which, in *his belief*, were for the good of *all*. But the fact stands out in bold relief, that he was not appointed the people's guardian, to govern them by his *own will*, but an agent to execute *theirs*. He persisted in the professions of his integrity to assert *his own policy* for *their* benefit; and the people have discarded him. So in my belief should they ever do to all who condemn their will.

The greater number of arguments and expositions upon this subject which I find extant, seem to have been called forth rather on the side of those who have controverted its essential principles. Precedent, pride, and power, are all opposed to popular freedom. The egotism of the wise man in office, maugre all his professions, yields a reluctant assent to become in good faith the agent of the people, and to permit their will to direct his vote and action.

The ingenious sophisms of the eloquent Burke, before the electors of Bristol, have evidently influenced the opinion of many of our countrymen, who have struggled for their own official independence, or for the consolidation principle of our Federal Government. Few appear to have looked the question full in the face, and boldly traced out the presumption of direct opposition; but the pretexts which have been resorted to for evading its legitimate demands, are endless. While, on the other hand, its perversion and abuse by the State Legislatures from time to time have tended greatly to involve the doctrine, and lost for it much of that vital energy which, in my opinion, it should always exert.

The proclamation of President Jackson assumed strong *national* grounds, and pressed a theory with much freedom to relieve the representative from being too much "*pulsied by the will of his constituents*;" a theory which assumed this to be "a Government in which the people of *all* the States *collectively* are represented." That the representatives, "are all representatives of the United States, *not representatives of the particular States from which they come*." That they were "paid by the United States, not by the State, nor accountable to it (the State) for any act done in the performance of their legislative functions." That the will of their constituents was to influence them *only* when "*partial or local interests*" came in conflict with each other, but it was their "*first and highest duty to promote the general good*." The exception thus made in favor of the *popular will* of the constituent, is upon its face a solecism—a practical absurdity; and seems to have been put in to soften, without qualifying, the boldness of the general declaration. Because there is *no subject* of general legislation, committed to Congress, but pre-supposes, and, in truth, must contemplate, some *general good* to be prejudiced or promoted by legislating thereon. And if the "*first and highest*" duty of the representative be to promote the general good, when will the secondary and lower duty of the representative come in turn, to promote the *local good*? The question of a tariff is supposed to affect local interests, in conflict with each other. But as the *first* and highest duty of the representative is for the good of the whole, and as the good of the whole is obviously to be affected by this measure, therefore the local will and interest of the constituent is to be postponed. This being true of every possible question, in a greater or less degree, the doctrine of instruction is by this proclamation completely expunged.

Five States of the Union, viz: Maine, Massachusetts, New Hampshire, Vermont, and North Carolina, have incorporated into their respective constitutions the right of the *people* to instruct their State representatives.

In the 1st session of the 1st Congress, while the amendments of the constitution were under discussion, Mr. Tucker, of South Carolina, proposed an amendment expressly *declaratory* of the right of the *people* to "instruct their representatives." The amendment was lost; but in debating it, Mr. Madison said the declaration of such right was true, so far as it meant the "giving advice and expressing the wishes of the people," though he denied its obligatory force *per se*. In conformity with this idea, several of the States express all such resolutions in form of advice or opinion. But this form, in my opinion, is equally as obligatory as to use the phraseology of *instruction*; for the question should always be, *is it the will of the people?*

The Legislature of Ohio, in 1834, resolved, "That the right of instruction belongs properly to the people, and that it is an abuse of that right whenever the Legislature instructs



contrary to that will." Mr. Giles, of Virginia, in 1811, denied the right of the Legislature to instruct him in his duties of United States Senator. "I do not (said he) consider myself the representative of the Legislature of Virginia; \* \* but of the *people of the United States*," &c. This high-toned consolidation sentiment brought him in conflict with the Legislature, who, in claiming their dominion over him, ran equally to the other extreme. Such has been the occasional agitations of this question, and such is the confusion, to a great extent, with which it pervades the public mind.

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*The following are the names referred to in page 14.*

THOMAS HINDS, *President.*

H. G. RUNNELS, }  
M. F. DEGRAFFENREID, } *Vice Presidents.*

JOHN H. MALLORY, }  
G. R. FALL, } *Secretaries.*

*From the County of Jefferson.*—Thos. Hinds, Philip B. Harrison, Philip O. Hughes, F. W. Green, Peter C. Chambles, Joseph Dunbar, Samuel C. Greene, James M. Smith.

*From the County of Adams.*—A. Campbell, Amos Alexander, W. T. Hewitt, Samuel Ivy,\* S. A. Cartwright,\* Joseph H. Holt, John B. Nevitt, James Stockman,\* John Fleming.\*

*From the County of Amite.*—Aaron Butler, Sr., Zachariah Lee, James Denman, Thos. R. Cheatham.

*From the County of Claiborne.*—E. W. Haring, John S. Rowland, Isham Arthur, Thos. D. Jeffers.

*From the County of Copiah.*—B. Kennedy, John Core.

*From the County of Covington.*—Gilbert D. Gere, Samuel Harthorn, Sr., E. S. Ragan, James L. Jolley, Alex. S. Harper.

*From the County of Carroll.*—A. W. G. Davis, Seth C. Platner.

*From the County of Franklin.*—Thomas Cotton, Adam Carraway.

*From the County of Hinds.*—John H. Mallory, Thos. Woodridge, Sr., H. D. Redwine, Alfred B. Cabbness, B. W. Edwards, Robert W. Roberts, Vincent Murphy, Geo. R. Fall, James Talbot, H. W. Dunlap, James McLarn, Henry S. Foote, George C. Dameron.

*From the County of Holmes.*—Danl. M. Dulany, Jefferson Fatherce, W. W. Cherry, Wiley Davis, S. M. Lynch.

*From the County of Jones.*—John Moffitt, Thomas L. Mott.

*From the County of Lawrence.*—Jos. Cooper, J. R. Chambers, Mathew B. Cannon, Harmon Runnels, Wm. Weathersby, Perry Cohea.

*From the County of Madison.*—Hector McNeill, John S. Gooch.

*From the County of Marion.*—Gardner Holcomb.

*From the County of Neshoba.*—James Ellis.

*From the County of Pike.*—Franklin Love, A. P. Cunningham, James Y. McNabb.

*From the County of Perry.*—Samuel F. Charlescraft.

*From the County of Rankin.*—James Myers, Wm. B. Word, John N. Drake, O. C. Deacs, Silas C. Walker, Alex. McDonald, Wm. Carter, Samuel Miles, Samuel D. Hay, W. D. Hawthorn, Daniel Fore, Eleazer Harris, Wm. T. Robertson.

*From the County of Simpson.*—John A. Banks, John Berry, Sr.

*From the County of Scott.*—Joshua Collins, Wade Holland, Wade Lampton.

*From the County of Tallakatchee.*—G. W. Martin, J. R. Girault, Thomas Thatcher.

*From the County of Warren.*—Edwin G. Cook, Jas. R. Blunt, Blanton McAulpin.

*From the County of Wilkinson.*—M. F. Degraffenreid, Thos. H. Prosser, Stanhope Posey.

*From the County of Yallahusha.*—Allen Walker, John H. M'Kinnie.

*From the County of Yazoo.*—Howell W. Runnels, James M. Long, Robert E. Beatie, Thomas Rawlins, Isham Arnold, John J. Michie, Robert McKinstry, Gabriel Swayze.

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\* Authorized to be signed since the Convention adjourned, not being able to attend at the time.

























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